

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte DOUWE FOLKERT TOLSMA

Appeal No. 2002-1897
Application No. 09/207,420

ON BRIEF

Before THOMAS, DIXON, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 1-5. The appellant appeals therefrom under 35 U.S.C. § 134(a). We affirm-in-part.

BACKGROUND

The invention at issue concerns data structures for data relating to entities that "may or may not be known beforehand." (Spec. at 1.) According to the appellant, a data structure called a "relational database" has been used to manage such data heretofore. (*Id.*) Data in such a database are stored in tables wherein a relation can be made between respective fields of different tables to express a correspondence.

Because the relations established in the data structure require that linked records in linked tables are completed before such a correspondence can be expressed, explains the appellant, a relational database is too rigid to model a physical reality in which organizations change continually and data are supplied at random times. (*Id.*)

In contrast, the appellant's inventive data structure is dynamic "in the sense that no demands are made on the time sequence in which data [are] processed and organizational expansion and other changes can be accommodated without difficulty and often without any appreciable adaptation of . . . software." (Appeal Br. at 2.) More specifically, data are stored in a dynamic structure which for every entity provides space for a unique identifier, a first set of pointers to subordinate entities, and a second set of pointers to superior entities. Within the data structure, "a status message related to an entity is likewise valid for all subordinate entities and, hence, for all subordinate entities of these subordinate entities and so on until the bottom of the structure is reached." (*Id.* at 3-4.)

A further understanding of the invention can be achieved by reading the following claim.

1. Device for managing data relating to entities which may or may not be known beforehand, comprising a central processing unit which, supplied with a suitable program code, is capable of receiving and storing the data in the form of status messages relating to one or more entities, characterized in that the data is stored in a dynamic structure which for each entity provides space for a unique identification and for a first

collection of references to possible subordinate entities and a second collection of references to superior entities such that a status message relating to an entity is likewise valid for each subordinate entity associated with the relevant entity by means of its first collection.

Claims 1-5 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,608,907 ("Fehskens").

OPINION

At the outset, we recall that claims that are not argued separately stand or fall together. *In re Kaslow*, 707 F.2d 1366, 1376, 217 USPQ 1089, 1096 (Fed. Cir. 1983) (citing *In re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979)). When the patentability of a dependent claim is not argued separately, in particular, the claim stands or falls with the claim from which it depends. *In re King*, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986) (citing *In re Sernaker*, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983); *In re Burckel*, 592 F.2d 1175, 1178-79, 201 USPQ 67, 70 (CCPA 1979)).

Here, rather than arguing the patentability of dependent claims 2 or 5 separately, the appellant asserts that "[b]y virtue of their dependency from claim 1, [the] claims . . . implicitly recite the above-described feature, and are therefore similarly unanticipated by the applied reference." (Appeal Br. at 6.) He also stipulates, "[t]he claims stand or

fall together" (*Id. at 3*). Therefore, claims 2 and 5 stand or fall with representative claim 1.

With this representation in mind, rather than reiterate the positions of the examiner or the appellant *in toto*, we address the three points of contention therebetween. First, the examiner asserts, "[d]efinition of a global or top-level entity and the definition of a subordinate entity are discussed in Fehskens. . . . The global entity and subordinate entity in Fehskens are related in [a] hierarchical relationship." (Examiner's Answer at 7.) The appellant argues, "the applied reference clearly fails to disclose at least the recited feature of space within each entity for a first collection of references to subordinate entities." (Appeal Br. at 5-6.)

"Analysis begins with a key legal question -- *what* is the invention *claimed*?" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)).

Here, representative claim 1 specifies in pertinent part the following limitations:
"a dynamic structure which for each entity provides space . . . for a first collection of references to possible subordinate entities and a second collection of references to superior entities. . . ." Giving the representative claim its broadest, reasonable construction, the limitations require a collection of references to superior entities and a collection of references to possible subordinate entities.

"[H]aving ascertained exactly what subject matter is being claimed, the next inquiry must be into whether such subject matter is novel." *In re Wilder*, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). "[A]nticipation is a question of fact." *Hyatt*, 211 F.3d at 1371, 54 USPQ2d at 1667 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)).

Here, Fehskens discloses a "management specification for an entity. . . ."
Col. 16, l. 51. The appellant admits that the reference's management specification includes a collection of references to superior entities. To wit, he states "[a]s is clear . . . , the mechanism provided by the applied reference provides for each entity definition to identify *superior* entities. . . ." (Appeal Br. at 5.) For its part, Fehskens confirms that, "[i]f the entity definition is for a subordinate entity, it has a superior field 50 which identifies the superior entities in the hierarchy." Col. 17 at ll. 31-33.

We find, furthermore, that reference's management specification also includes a collection of references to possible subordinate entities. Specifically, "the body portion 53 of a management specification includes . . . **a subordinate entity list 57**, if the entity class contains any subordinate entities. If the body portion 53 includes a subordinate entity list 57, each item in the subordinate entity list 57 comprises an entity definition 46 (FIG. 3A), with the name field 47 including 'SUBORDINATE'." *Id.* at ll. 57-65 (emphasis added). Therefore, we affirm the rejection of claim 1 and of claims 2 and 5, which fall therewith.

Second, the examiner asserts, "[t]he unique identification of an entity as a superior or subordinate is also disclosed in Fehskens." (Examiner's Answer at 8.) He explains, "[a]n entity definition 46 includes a name field 47 that includes *a name and a code* by which the entity can be identified. In addition, the name field 47 identifies the

entity as a global or subordinate entity and identifies a class name for the entity (column 17, lines 25 - 33)." (*Id.*) The appellant argues, "[a]bsent from . . . the reference is the disclosure of any mechanism for unique identification of an entity through the designation of an organizational unit and a coding, with such coding further defined as being unique within the organizational unit." (Appeal Br. at 6-7.)

Claim 3 specifies in pertinent part the following limitations: "an entity is uniquely identified by a designation of an organizational unit within which the entity exists together with a coding which is unique at least within said organizational unit." Giving the claim its broadest, reasonable construction, the limitations require a designation of an organizational unit within which an entity exists and a code that is unique at least within the organizational unit.

The appellant admits that the passage cited by the examiner "describes a name field 47 that includes a name and a code by which the entity can be identified." (Appeal Br. at 6.) For its part, Fehskens confirms that "[a]n entity definition 46 includes a name field 47 that includes a name and a code by which the entity can be identified." Col. 17, ll. 28-30. "In addition, the name field 47 identifies the entity as a global or subordinate entity and identifies a class name for the entity." *Id.* at ll. 30-32. Because the reference's class name designates the class of the entity, we find that the class name designates the organizational unit within which the entity exists. Because Fehskens'

code allows an entity to be identified, moreover, we also find that the code is unique at least within the organizational unit, viz., the class. Therefore, we affirm the rejection of claim 3.

Third, the examiner asserts, "[a]s to claim 4, at least one conditional statement is linked to one or more entities in the structure, which statement results in the outcome provided therein as soon as the set condition is fulfilled (column 17, lines 31-38)." The appellant argues, "it is unclear how this or any other passage of the applied reference discloses at least one conditional statement linked to one or more entities in the structure, with such statement resulting in the outcome provided therein as soon as the set condition is fulfilled." (Appeal Br. at 7.)

Claim 4 specifies in pertinent part the following limitations: "at least one conditional statement is linked to one or more entities in the structure, which statement results in the outcome provided therein as soon as the set condition is fulfilled." Giving the claim its broadest, reasonable construction, the limitations require at least one conditional statement, which results in an outcome specified therein when a specified condition is fulfilled, linked to at least one entity.

"[A]bsence from the reference of any claimed element negates anticipation."
Kloster Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed.

Cir. 1986). Here, we agree with the appellant that the passage of Fehskens cited by the examiner "describes various fields within an entity definition. . . ." (Appeal Br. at 7.) The examiner fails to show, however, that any of the fields constitutes a conditional statement, which results in an outcome specified therein when a specified condition is fulfilled, linked to at least one entity. The absence of such a showing negates anticipation. Therefore, we reverse the rejection of claim 4.

CONCLUSION

In summary, the rejection of claims 1-3 and 5 under § 102(e) is affirmed. The rejection of claim 4 under § 102(e), however, is reversed. "Any arguments or authorities not included in the brief[s] will be refused consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R. § 1.192(a) (2002). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities not included therein are neither before us nor at issue but are considered waived. No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a) (2002).

AFFIRMED-IN-PART

JAMES D. THOMAS
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

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Appeal No. 2002-1897
Application No. 09/207,420

Page 11

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APPEAL NO. 2002-1897 - JUDGE BARRY
APPLICATION NO. 09/207,420

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Thanks, Judge Barry